Supreme Court, U.S.
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No. 09-997

In The Supreme Court of the United States

AL DICKSON, et al.,

Petitioners,

v.

SAN JUAN COUNTY, UTAH, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS SAN JUAN HEALTH SERVICES DISTRICT, PAST AND PRESENT MEMBERS OF THE BOARD OF TRUSTEES, REID WOOD AND LAUREN SCHAFER

BLAINE J. BENARD
CAROLYN COX
Counsel of Record
HOLME ROBERTS & OWEN LLP
299 South Main Street, Suite 1800
Salt Lake City, UT 84111
(801) 521-5800
carolyn.cox@hro.com

Counsel for Respondents San Juan Health Services District, Past and Present Members of the Board of Trustees, Reid Wood and Lauren Schafer

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED FOR REVIEW

Whether the court of appeals properly (i) affirmed the district court's denial of petitioners' Rule 60 motion for relief from final judgment and (ii) enjoined petitioners and their counsel from seeking enforcement of the tribal court orders at issue in this matter in any other forum.

PARTIES TO THE PROCEEDING

Petitioners

Petitioners Fred Riggs, Donna Singer and Alison Dickson are plaintiffs below and were plaintiffs in the action before the Navajo tribal court.

Respondents

Respondents San Juan Health Services District, past and present members of the Health District Board of Trustees, including but not limited to Karen Adams, Roger Atcitty, Patsy Shumway and John Lewis, and Reid Wood and Lauren Schafer (collectively called "respondents" or "Health District respondents") are defendants below and were defendants in the action before the Navajo tribal court.

Additional Parties in this Court

San Juan County, J. Tyron Lewis, Lynn Stevens, Manuel Morgan, Bill Redd, Rick Bailey and Craig Halls (collectively "San Juan County respondents") are additional respondents and defendants below and were defendants in the action before the Navajo tribal court.

Additional Parties Below

Michele Lyman and Helen Valdez (the "non-tribal court plaintiffs") were additional plaintiffs below, but

PARTIES TO THE PROCEEDING – Continued

were not parties in the Navajo tribal court and are not parties to the petition for certiorari.[1]

Cleal Bradford, John Housekeeper, Gary Holliday, Dr. James Redd, Dr. Val Jones, Dr. Manfred Nelson, Marilee Bailey, Ora Lee Black, Laurie Wallace, Carla Grimshaw, Gloria Yanito, Julie Bronson were additional defendants below but were not parties in the Navajo tribal court.

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[1] Although the claims of the non-tribal court plaintiffs were factually and legally distinct from those of petitioners, the initial action filed below included both sets of claims in one action. However, litigation of the two sets of claims, and appeals related thereto, have, for the most part, proceeded separately. The Tenth Circuit Court of Appeals decided the final appeal of the non-tribal court plaintiffs (adversely to the plaintiffs) on October 1, 2008. *Lyman v. San Juan County,* 2008 U.S. App. LEXIS 20968 (10th Cir. Oct. 1, 2008). No timely petition for certiorari was filed. Petitioners assert that by using a consolidated caption containing the names of Lyman and Valdez, the Tenth Circuit "chose to incorporate by reference" all rulings related to both petitioners and Lyman and Valdez," allowing petitioners to seek review of Tenth Circuit's 2008 decision. Petition at 2. However, the Tenth Circuit's 2008 ruling with respect to the non-tribal court plaintiffs is final and the use of a consolidated caption cannot revive it.

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OPINIONS BELOW

The July 2, 2008 Memorandum Opinion & Order Re: Post Mandate Motions ("Memorandum Opinion & Order") of the United States District Court for the District of Utah, Central Division ("district court"), is reported at *MacArthur v. San Juan County,* 566 F. Supp. 2d 1239 (D. Utah 2008).[2] The December 10, 2009 decision of the United States Court of Appeals for the Tenth Circuit ("court of appeals") is reported at *Dickson v. San Juan County,* 2009 U.S. App. LEXIS 26908 (10th Cir. Dec. 10, 2009) ("*Dickson*") and is reprinted at P. App. 1a-12a.

BASIS FOR JURISDICTION

The court of appeals entered its decision on December 10, 2009. Petitioners Singer, Riggs and Dickson filed the petition for writ of certiorari on February 16, 2010, and the petition was placed on the docket on February 24, 2010. Pursuant to Supreme Court Rule 15.3, respondents file this Brief in Opposition to the petition for writ of certiorari within thirty days of February 24, 2010.

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[2] Petitioners failed to include the district court's July 2, 2008 Memorandum Opinion & Order in their Appendix and instead included a copy of an order that was also entered by the district court on July 2, 2008, but which was not part of petitioners' appeal. *See* Petitioners' Appendix ("P. App.") at 13a-15a.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

COUNTERSTATEMENT OF THE CASE

A detailed recitation of the factual background of this case is unnecessary and therefore the Health District respondents address only the procedural background of the case. Petitioners filed a complaint in the Navajo Nation against the Health District respondents and San Juan County respondents. Petitioners' claims pertained to their employment at the Montezuma Creek Health Clinic, which was located in San Juan County within the exterior boundaries of the Navajo Nation and, prior to January 1, 2000, was operated by the Health District. *Dickson*, 2009 U.S. App. LEXIS 26908, P. App. at 2a-3a. In December 1999, the Navajo tribal court entered a sweeping preliminary injunction against the Health District parties and other defendants. Thereafter, petitioners sought to enforce tribal court's injunction and other related orders by filing suit in federal district court. The district court dismissed the case on the grounds of sovereign immunity. *Id.* On appeal, the court of appeals remanded the matter to the district court, directing it to conduct an analysis of the tribal court's subject matter jurisdiction over the Health District and San Juan County respondents before reaching the issue of sovereign immunity. *MacArthur v. San Juan County*, 309 F.3d 1216 (10th Cir. 2002) ("*MacArthur I*"). After conducting the required

analysis, the district court again granted judgment in favor of the Health District and San Juan County respondents. *MacArthur v. San Juan County*, 391 F. Supp. 2d 895, 1056-57 (D. Utah 2005) ("*MacArthur II*").

On appeal, the court of appeals affirmed the district court's judgment in favor of respondents, finding the tribal court orders were unenforceable because the Navajo tribal court lacked subject matter jurisdiction over nearly all of the respondents' activities. *MacArthur v. San Juan County*, 497 F.3d 1057, 1067 (10th Cir. 2007) cert. denied, 552 U.S. 1181 (2008) ("*MacArthur III*"). Petitioners sought review of the *MacArthur III* decision by this Court, but their petition for certiorari was denied. Following *MacArthur III* and the subsequent denial of certiorari, petitioners filed numerous motions in federal and tribal court seeking to avoid the *MacArthur III* decision and enforce the tribal court orders. In particular, petitioners filed a Federal Rule of Civil Procedure 60(b) motion asking the district court to alter the holding of *MacArthur III*, and enforce the tribal court orders. *Dickson*, 2009 U.S. App. LEXIS 26908, P. App. at 5a.

The district court denied the Rule 60(b) motion, holding that petitioners were seeking to re-litigate issues resolved in *MacArthur III*, and that the law of the case doctrine precluded reconsideration. *MacArthur v. San Juan County*, 566 F. Supp. 2d 1239, 1251 (D. Utah 2008) ("*MacArthur IV*"). The district court also granted a permanent injunction against

petitioners and their counsel from further attempts to enforce the tribal court judgment and from proceeding in any forum to re-litigate the questions of jurisdiction, immunity and enforceability of the tribal court orders already decided by the court of appeals in *MacArthur III*. *Id.* at 1249-1252. Petitioners appealed the district court's denial of their Rule 60(b) motion and the court's imposition of a permanent injunction. The court of appeals affirmed the district court in all aspects. *Dickson,* 2009 U.S. App. LEXIS 26908, P. App. at 9a-10a.

REASONS FOR DENYING THE PETITION

The petition must be denied for several reasons. First, petitioners' failure to brief the relevant issues – denial of their Rule 60(b) motion and the grant of injunctive relief – requires denial of the petition. Moreover, the court of appeals correctly held that denial of the Rule 60(b) motion was required by the law of the case doctrine and appropriately affirmed imposition of injunctive relief.

I. PETITIONERS' FAILURE TO BRIEF THE APPROPRIATE ISSUE WARRANTS DENIAL OF THE PETITION

Supreme Court Rule 10 provides that a petition for writ of certiorari should only be granted for

compelling reasons.[3] Pursuant to Supreme Court Rule 14.1(h), the petition should provide a "direct and concise argument amplifying the reasons relied on for allowance of the writ." Here, petitioners not only fail to present a compelling reason for granting certiorari, they fail to address the relevant issue raised by the appeal – whether the district court correctly denied their Rule 60 motion for relief and properly granted injunctive relief against them. Instead of addressing the relevant issues, petitioners seek to revisit and relitigate the issues settled in *MacArthur III*, a decision for which certiorari was previously sought and denied. Because petitioners failed to brief the issues relevant to their petition, it should be denied.

II. THE COURT OF APPEALS PROPERLY AFFIRMED THE DISTRICT COURT'S DENIAL OF PETITIONERS' RULE 60(B) MOTION

The court of appeals properly found that review of petitioners' Rule 60(b) motion was barred by the law of the case doctrine. As the court of appeals

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[3] Such reasons generally include a split between one or more federal circuit courts of appeals on an important federal law issue, a split between a state court of last resort and a federal circuit court of appeals on an important federal law issue, an instance where a court has acted outside of its own jurisdiction, or where a state court or federal circuit court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

found, both in the district court and on appeal, petitioners sought to re-litigate the very same questions answered by the court of appeals in *MacArthur III*, i.e., did the tribal court have subject matter jurisdiction over petitioners and do federal courts have jurisdiction to answer this question. *Dickson,* 2009 U.S. App. LEXIS 26908, P. App. at 7a-8a. Both here and on appeal, petitioners continued to assert vehemently that *MacArthur III* was wrongly decided, as was *Montana v. United States,* 450 U.S. 544 (1981), the seminal case on tribal court jurisdiction.

As the court of appeals noted, under "the law of the case doctrine, 'when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.'" *Dickson,* 2009 U.S. App. LEXIS 26908, P. App. at 8a, *quoting Arizona v. California,* 460 U.S. 605, 618 (1983). Under the law of the case doctrine, both the district courts and appellate courts are bound by a prior appellate decision in the same case. This rule is based on sound public policy that litigation should have an end, and parties should not be allowed to continue to re-litigate and re-argue settled issues. *Gage v. Gen. Motors Corp.*, 796 F.2d 345, 349 (10th Cir. 1986).

Petitioners fail to address the law of the case doctrine, much less provide any authority suggesting its application in this case was incorrect. As this case demonstrates, without the law of the case doctrine, "there would be no end to a suit if every obstinate litigant could, by repeated appeals, compel a court to

listen to criticisms on their opinions. . . ." *Dickson*, 2009 U.S. App. LEXIS 26908, P. App. at 8a-9a, *citing*, *Roberts v. Cooper*, 61 U.S. 467, 481 (1857). As the court of appeals stated, "we cannot emphasize to Appellants strongly enough that this matter is at an end." *Id.* at 11a. The court of appeals properly affirmed the district court pursuant to the law of the case doctrine, and the petition should be denied.

III. THE COURT OF APPEALS PROPERLY AFFIRMED THE DISTRICT COURT'S IMPOSITION OF A PERMANENT INJUNCTION

In its order, the district court granted a motion by the San Juan County respondents to enjoin permanently petitioners and their counsel from seeking to enforce in any way the orders issued by the tribal court against the defendants in tribal court or in any other court. Given the finality of the *MacArthur III* decision, and petitioners' continued attempts to circumvent that ruling, the court of appeals properly affirmed the injunctive relief entered by the district court. Petitioners fail to present any argument or authority suggesting the court of appeals or district court erred in granting injunctive relief and their petition must therefore be denied.

CONCLUSION

For the reasons set forth above, the petition must be denied.

Respectfully submitted,

BLAINE J. BENARD
CAROLYN COX
Counsel of Record
HOLME ROBERTS & OWEN LLP
299 South Main Street,
Suite 1800
Salt Lake City, UT 84111
(801) 521-5800

Counsel for Respondents San Juan Health Services District, Past and Present Members of the Board of Trustees, Reid Wood and Lauren Schafer